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## FISCAL IMPACT REPORT

SPONSOR Robinson      DATE TYPED 2/15/05      HB \_\_\_\_\_

SHORT TITLE Sue Texas for Return of Land      SB 555

ANALYST Medina

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Indeterminate		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General

### SUMMARY

#### Synopsis of Bill

Senate Bill 555 directs the Attorney General to sue the State of Texas for the return of 603,485 acres of land. The bill indicates that this land was erroneously appropriated to the State of Texas in the drawing of the north-south boundary between Texas and New Mexico. The bill also directs the Attorney General to seek compensation for mineral rights, oil and gas royalties, property taxes, and grazing privileges that New Mexico has not realized due to the error in drawing the boundary.

#### Significant Issues

According to the Attorney General staff analysis, The bill is based on the theory that the true border between the two states is the 103<sup>rd</sup> meridian, but the 1859 survey establishing the actual boundary set the border three miles east. Allegedly, New Mexico's draft constitution in 1910 claimed the border should be on the 103<sup>rd</sup> meridian as intended. A Congressional investigation was convened, to which New Mexico, not yet a state, was not invited, and Congress opted to leave the border in place. Allegedly Texas political forces threatened to scuttle New Mexico's bid for statehood if the dispute continued.

According to the Attorney General staff analysis: “In *Oklahoma v. Texas*, 272 U.S. 21 (1926), the United States Supreme Court set forth the criteria for settling border disputes between states:

*“It is well settled that governments, as well as private persons, are bound by the practical line that has been recognized and adopted as their boundary, Missouri v. Iowa, 7 How. 660, 670; New Mexico v. Colorado, [267 U.S. 30, 40](#), 45 S. Ct. 202; and that a boundary line between two governments which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by them for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the correct course, the line so established taking effect, in such case, as a definition of the true and ancient boundary, Virginia v. Tennessee, [148 U.S. 503, 522](#), 13 S. Ct. 728; Maryland v. West Virginia, [217 U.S. 1, 42](#), 30 S. Ct. 268; New Mexico v. Colorado, *supra* at page 40 (45 S. Ct. 202).”*

The Attorney General’s staff analysis states that if this bill passes, the Attorney General would have to determine whether such suit has merit. The Attorney General would be constrained by the New Mexico Supreme Court Rule 16-301 which prohibits bringing frivolous suits. Congressional recognition of the boundary as it exists today could be controlling. Any suit such as the one proposed in this bill would have to be brought in the United States Supreme Court.

### **FISCAL IMPLICATIONS**

This bill does not include an appropriation for support of the proposed litigation. It is possible that the litigation proposed in this bill would require additional resources, including FTE attorneys and staff.

### **ADMINISTRATIVE IMPLICATIONS**

According to the Attorney General’s analysis, although the Attorney General may be “directed” by the Legislature to sue Texas, the Attorney General is required, as an independently elected member of the executive branch, and as an attorney, to determine the merits of any claim against Texas.

### **OTHER SUBSTANTIVE ISSUES**

This bill implicates the Separation of Powers Doctrine contained Article III section 1 of the New Mexico Constitution. That doctrine generally prohibits one branch of government from interfering with the affairs of another.

### **ALTERNATIVE**

The Legislature could propose a memorial requesting the Attorney General review the merits of any land claims against the State of Texas and report to the Legislature.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Legislature would not direct the Attorney General to sue the State of Texas over its boundary with New Mexico.